STATE OF MICHIGAN

COURT OF APPEALS

CHRIS ROWLEY,

Plaintiff-Appellant,

v

ARVCO CONTAINER CORP.,

Defendant-Appellee.

UNPUBLISHED
February 26, 2019

No. 342698
Kalamazoo Circuit Court
LC No. 2017-000175-CZ

Before: METER, P.J., and SAWYER and CAMERON, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10) and dismissing plaintiff's claim of retaliatory discharge in violation of public policy. We affirm.

I. BACKGROUND

Defendant is a manufacturer of corrugated boxes. Plaintiff started working for defendant at its Kalamazoo facility in 2014 and was ultimately discharged in August 2016 after an incident between plaintiff and defendant's human resources manager, Cheri Perry.

Defendant has a zero-tolerance policy against workplace violence. Under this policy, an employee is subject to immediate termination for engaging in violence or threatening violence. In early July 2016, plaintiff and another employee, Mark McAdam, were involved in an incident coming within the purview of the zero-tolerance policy. According to plaintiff, McAdam confronted him, "chest bumped him, spit at him and challenged him to a fight" over a dispute regarding plaintiff training on a machine. According to McAdam, plaintiff started the confrontation when he became upset that McAdam would not immediately move a forklift and the confrontation ended with both men cursing at each other. One week later, plaintiff and McAdam were involved in a second incident. Both employees agree that this incident started when McAdam placed his hand on plaintiff's shoulder, attempting to apologize for the earlier incident. Plaintiff testified that he cursed at McAdam, telling him to get his hand off of him. McAdam then followed plaintiff, cursing at him and telling him that he was going to "kick [his] ass."

Plaintiff reported this second incident to Perry and she asked for statements from plaintiff and McAdam. After reviewing the statements, Perry instructed a supervisor to meet with plaintiff and McAdam to discuss the zero-tolerance policy. The supervisor informed both employees that, if a future incident occurred, they would both be terminated. The supervisor testified that plaintiff and McAdam blamed each other for the incidents, but he informed them that he was not the "one to decide who's doing it wrong or right" and that, if they "have a problem, they need to take it to HR."

According to plaintiff, he went to Perry's office shortly thereafter. Plaintiff testified that he was "very upset and distraught" and that he submitted a formal request for his personnel file. Plaintiff stated that he told Perry that he "did not understand why [his] job was being threatened" and that he did not understand why he was "being persecuted . . . for somebody else harassing and threatening and physically confronting" him. Plaintiff testified that Perry "could physically see that I was shaking and upset and distraught because of the whole situation." According to plaintiff, his "voice was cracking" and he "couldn't even speak at some times." For her part, Perry testified that plaintiff was "very angry" that McAdam had not been fired and that "he wanted to make sure I understood how angry he was." Perry continued that plaintiff leaned over her desk, put his fists out, and said, "Look at me, I'm so angry, I'm shaking." Perry had to instruct plaintiff to leave her office several times before he complied.

Perry testified that she informed several supervisors about plaintiff's behavior in her office. Later that day, Perry prepared plaintiff's personnel file. The next morning, Perry and the three supervisors met to discuss the incident. The group decided to terminate plaintiff's employment and Perry called defendant to inform him of their decision. According to each of the supervisors, the reason for plaintiff's discharge was his threatening behavior in Perry's office. Perry mailed plaintiff's personnel file to him on the same day plaintiff was discharged.

Eight months later, plaintiff filed a complaint against defendant, alleging that defendant's termination of plaintiff's employment violated "well-established legislative enactments" protecting an employee's right to object to assaults and batteries in the workplace, as well as an employee's right to review his personnel record. After the close of discovery, defendant moved for summary disposition, arguing that plaintiff had shown no evidence of any protected activity, and that, in any event, it discharged plaintiff for a legitimate, non-discriminatory reason, i.e., his behavior in Perry's office.

The trial court granted defendant's motion for summary disposition, concluding that plaintiff failed to establish protected activity and that, even had plaintiff established protected activity, plaintiff had not shown a causal relationship between the protected activity and the discharge. With regard to protected activity, the trial court noted that plaintiff's complaint was not that he was assaulted, but rather that defendant did not terminate McAdam for the alleged assault. The trial court concluded that the "fact that [plaintiff] was dissatisfied with the employer's response" did not rise to the level of protected activity. Concerning causation, the trial court noted that plaintiff's "beef was that he believed that his employer was treating him unfairly, and that that unfair treatment caused an additional reaction on his relating to Ms. Perry." The trial court concluded that plaintiff's conduct in the meeting with Perry was sufficient to "raise a red flag" that plaintiff would not respect the internal grievance process and would "expand the conflict beyond the initial issues" between plaintiff and McAdam. Thus, the

trial court concluded that plaintiff's behavior in the meeting constituted a non-pretextual justification for his discharge.

This appeal followed.

II. ANALYSIS

"We review de novo a trial court's grant or denial of summary disposition." *Tomra of North America, Inc v Dep't of Treasury*, ___ Mich App ___, ___; ___ NW2d ___ (2018) (Docket No. 336871); slip op at 2. "A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the claim, and is appropriately granted when, except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." *Id*.

"Michigan law generally presumes that employment relationships are terminable at the will of either party." *Landin v Healthsource Saginaw, Inc*, 305 Mich App 519, 523; 854 NW2d 152 (2014). "There is, however, an exception to the at-will employment doctrine based on the principle that some grounds for discharging an employee are so contrary to public policy as to be actionable." *Id*. (internal citation and quotation marks omitted). Michigan courts have recognized that a discharge is contrary to public policy where the discharge is premised (1) on the employee's exercise of a right guaranteed by law, (2) on the employee's exercise of a duty required by law, or (3) on the employee's refusal to violate the law. *Id*. at 526. Although this list is not exhaustive, "our courts have yet to find a situation meriting extension beyond [these] three circumstances." *Id*.

In Michigan, claims of unlawful discrimination follow the burden-shifting framework set forth in *McDonnel Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). See *Debano-Griffin v Lake County*, 493 Mich 167, 176; 828 NW2d 634 (2013). To establish a prima facie case of unlawful retaliation, a plaintiff must show "(1) that he engaged in a protected activity, (2) that this was known by defendant, (3) that defendant took an employment action adverse to plaintiff, and (4) that there was a causal connection between the protected activity and the adverse employment action." *Landin*, 305 Mich App at 533. Once a plaintiff establishes a *prima facie* case, a rebuttable presumption of retaliation arises. *Debano-Griffin*, 493 Mich at 176. The employer must then offer a legitimate, non-retaliatory reason for the discharge. *Id*.

Here, the trial court concluded that plaintiff failed to establish a *prima facie* case of retaliatory discharge because (1) plaintiff failed to establish protected activity and (2) plaintiff failed to establish a causal connection between any protected activity and his discharge. Plaintiff challenges both conclusions on appeal. Nonetheless, we need not address plaintiff's argument regarding protected activity because, assuming *arguendo* that plaintiff engaged in protected activity by requesting his personnel file and reporting McAdam's workplace violence, the record indicates that plaintiff failed to establish a causal connection between his discharge and this protected activity.

Plaintiff argues that a material question of fact exists regarding whether he was discharged for requesting his personnel file or reporting McAdam's workplace violence. Regarding the personnel file, Perry testified that defendant routinely granted employees' requests

for copies of their personnel files and that plaintiff's request for his file was a "nonissue." In fact, Perry prepared plaintiff's personnel file the same afternoon that plaintiff requested it and mailed a copy of it to him the next day. Plaintiff presented no evidence that defendant generally opposed personnel-file requests or that any of defendant's decision makers were motivated to discharge plaintiff because of the request. Indeed, it is illogical that defendant would discharge plaintiff for requesting his personnel file and provide the file to him on the same day. Thus, the trial court did not err by concluding that plaintiff had failed to establish a causal connection between his personnel-file request and his discharge.

The record is similarly devoid of any indication that plaintiff's complaint about McAdam's workplace violence was a motivating factor in defendant's decision to discharge plaintiff. Plaintiff provided no evidence that defendant generally opposed complaints of workplace violence. Indeed, defendant had several systems in place to document incidents that violated its zero-tolerance policy on violence. The record shows that plaintiff's complaint about McAdam's violation of the zero-tolerance policy was documented and handled by human resources. By the time plaintiff brought his grievance to Perry, his report of workplace violence had already been processed and a decision had been issued. At no point during this process was plaintiff discouraged from making complaints or reporting violence. Plaintiff was not discharged until he confronted Perry about the decision not to fire McAdams and each of the decision makers behind plaintiff's discharge indicated that plaintiff was discharged for his behavior in Perry's office. Plaintiff argues that his behavior in Perry's office cannot be separated from the fact that he was complaining about McAdam's workplace violence. This is simply not true. It is entirely possible to separate the *substance* of plaintiff's complaint from the *manner* in which he made the complaint. Plaintiff has presented no evidence that he would have been discharged had he made the complaint in a more appropriate fashion.

Plaintiff argues that Perry's description of the encounter was not credible. Thus, plaintiff argues that, even though the supervisors may have had a good-faith belief that plaintiff acted aggressively towards Perry, because they were not present for the encounter, defendant is still liable for retaliatory discharge under a "cat's paw" theory.[1] Nonetheless, even if plaintiff is correct that Perry's description of the encounter was not credible, plaintiff has presented no evidence that Perry used the encounter as a pretext to discharge plaintiff for complaining of violence. See *Debano-Griffin*, 493 Mich at 176 ("A plaintiff must not merely raise a triable issue that the employer's proffered reason was pretextual, but that it was a pretext for unlawful retaliation.") (internal citation, brackets, and quotation marks omitted). Plaintiff has put forth no evidence indicating that Perry opposed complaints about workplace violence. Indeed, the record indicates that Perry processed several complaints of violence in her role as human resources manager. Thus, even if plaintiff is correct that Perry's testimony was not credible, at most, Perry's incredible testimony creates an inference that she held a personal animosity against plaintiff, which is insufficient to support a retaliatory discharge claim.

[1] A "cat's paw" theory allows a plaintiff to prove his retaliatory-discharge case by proving discriminatory animus on the part of a supervisor who did not make the ultimate employment decision. See *Staub v Protctor Hosp*, 562 US 411, 415; 131 S Ct 1186; 179 L Ed 144 (2011).

Plaintiff argues that "comparator evidence" establishes that defendant tolerated other examples of workplace violence. Hence, plaintiff argues that, because his conduct was less severe than other instances of workplace violence, his behavior in Perry's office could not have been the actual reason for his discharge. Crediting plaintiff's descriptions of these events, plaintiff is correct that defendant did not strictly enforce its zero-tolerance policy; plaintiff's examples show that employees were often given a warning or two before they were discharged. What plaintiff overlooks, however, is that he was also given a preliminary warning after the two incidents with McAdam. Defendant did not discharge plaintiff until he engaged in another incident of inappropriate behavior in Perry's office. Thus, viewing the evidence in the light most favorable to plaintiff, plaintiff has not shown that he was treated differently than any other employee. Moreover, even if plaintiff could show that he was treated differently, he has still failed to establish a link between protected activity and his discharge. Even if plaintiff is correct that his behavior in Perry's office was not the reason for his discharge, he has presented no evidence that tends to show that the real reason for his discharge was his complaint of violence or request for his personnel file.

Finally, plaintiff argues that he was discharged for objecting to defendant's failure to adhere to the zero-tolerance policy on violence by discharging McAdam. Preliminarily, we note that plaintiff's *claim* was that he was fired for reporting workplace violence, not for objecting to defendant's failure to adhere to its policy. In any event, case law is clear that public policy does not protect an internal objection to management decisions. See *Suchodoskli v Michigan Consol Gas Co*, 412 Mich 692, 696; 316 NW2d 710 (1982). Defendant's internal zero-tolerance policy on workplace violence is not evidence of public policy and plaintiff has not otherwise shown that public policy mandates employers to take such a strict disciplinary approach to workplace violence. *Id*. Thus, even if plaintiff could show that he was discharged for objecting to defendant's failure to adhere to its zero-tolerance policy, because there is no public policy that protects an employee's right to make an internal objection to management decisions, defendant failed to establish a causal link between his discharge and protected conduct.

Accordingly, because plaintiff failed to establish a causal connection between any protected conduct and his discharge, he failed to present a *prima facie* case of retaliatory discharge. Thus, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Patrick M. Meter
/s/ David H. Sawyer
/s/ Thomas C. Cameron